

BOARD OF APPEALS
for
MONTGOMERY COUNTY
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 217
Rockville, Maryland 20850
(240) 777-6600

Case No. S-2570

PETITION OF JEFFREY C. AND DIANE JOY MARTIN

OPINION OF THE BOARD

(Public Hearing Date: June 4, 2003)

(Effective Date of Opinion: September 11, 2003)

Case No. S-2570 is an application for a special exception pursuant to Section 59-G-2.00 (Accessory Apartment) of the Zoning Ordinance to permit an accessory apartment.

The Board of Appeals held a hearing on the application on June 4, 2003. Jeffrey and Diane Martin appeared in support of the application. Stephen Morris, Housing Code Inspector, Montgomery County Department of Housing and Community Affairs (DHCA) also testified. The Board received no correspondence or testimony in opposition to the application.

Decision of the Board: Special Exception **granted** subject
to conditions enumerated below.

EVIDENCE PRESENTED

1. Jeffrey and Diane Martin seek permission to convert an existing carriage house/garage into an accessory apartment. The subject property is Parcel 609, Rocky Spring Boyd Delay Subdivision, located at 15021 Rocking Spring Drive, Rockville, Maryland, 20853, in the R-200 Zone, and is listed on the county's Historic Preservation Master Plan.
2. The Montgomery County Historic Preservation Commission (HPC) submitted a letter expressing its support for the application [Exhibit No. 12].
3. Maryland National Capital Park and Planning Commission (MNCPPC) technical staff reviewed the application and recommend approval. [Exhibit No. 15]. Staff finds that the application is consistent with the Approved and Adopted

1994 Aspen Hill Master Plan. Staff finds that the application is in harmony with the Master Plan objective of encouraging, protecting and enhancing existing residential neighborhoods, and, since it is located at the end of a cul de sac, with the plan's guidance to avoid excessive concentration of special exception and other nonresidential land uses along major transportation corridors. Staff finds that there is only one other special exception in the surrounding area.

Staff finds that the onsite parking is sufficient to accommodate the required two spaces, and recommends against the applicants' request for an additional driveway. Staff further finds that the accessory apartment will not have an adverse effect on the area transportation systems, pedestrian or vehicular safety.

Staff finds that the application meets all the development standards for the zone, together with the general and specific standards for granting accessory apartments. Staff notes that two new exterior lights are proposed for the rear and front of the carriage house, that these proposed lights were reviewed by the HPC, and that they maintain the residential character of the property.

4. DHCA Housing Code Inspector Stephen Morris inspected the subject property and submitted a report of his inspection. Because the accessory apartment is not yet constructed, he recommends that all necessary permits be obtained and finalized. [Exhibit No. 14]. He noted that the site has plenty of parking.

5. Jeffrey Martin testified that the existing carriage house/garage is dilapidated. He submitted revised plans for its renovation [Exhibit 17]. He stated that the request for a second driveway has been withdrawn. He stated that the upper floor of the accessory apartment will be used for storage, and that the living space of the apartment will comprise about 1152 square feet, and be suitable for occupancy by two unrelated persons or a family of no more than four. Mr. Martin stated that the accessory apartment is served by public utilities.

5. The accessory apartment will be located in an existing carriage house/garage, which will be rehabilitated. [Exhibit Nos. 1, 3, 17].

6. Mr. and Mrs. Martin reside in the main house.

7. The lot measures 135,000 square feet. [Exhibit No. 3a].

8. The house was built in 1879 and the Martins have owned it for eleven years. [Exhibit No. 3a].

9. The carriage/house garage will be rehabilitated to accommodate the accessory apartment. The Historic Preservation Commission reviewed and supports the plans for the renovation. [Exhibit Nos. 12 and 17].

10. The accessory apartment will contain a kitchen with dining area, a bedroom, living room and studio, and a deck. [Exhibit No. 17].

11. The accessory apartment has the same address as the house. [Exhibit No. 3].

12. At least two off-street parking spaces are available in the existing driveway. [Exhibit Nos. 3a, 4 and 15].

FINDINGS OF THE BOARD

GENERAL STANDARDS

Sec. 59-G-1.2. Conditions for granting a special exception.

59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The physical and operational characteristics necessarily associated with an accessory apartment include: the existence of the apartment as a separate entity from the main living unit, but sharing a party wall with the main unit; the provision within the apartment of the necessary facilities and spaces and floor area to qualify as a habitable space under the Building Code; provision of a separate entrance and walkway, and sufficient lighting; additional activity from that household, including more use of the outdoor space and more pedestrian and automobile traffic and parking activity; and the potential for additional noise from the additional household.

The accessory apartment in the instant application will be subordinate to the main dwelling, will be renovated to maintain the historic character and the single family appearance of the house, and has at least two off-street parking spaces.

The Board finds that none of the physical or operational characteristics of the proposed accessory apartment will exceed what would be expected with the

use. The Board finds that there will be no non-inherent adverse effects from this proposed accessory apartment.

59-G-1.21. General Conditions.

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Accessory apartments are permitted, by special exception, in the R-200 Zone.

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

As discussed further below, the proposed accessory apartment will comply with all pertinent standards.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Board adopts MNCPPC staff's finding that the application is consistent with the Approved and Adopted 1994 Aspen Hill Master Plan. The Board concurs that the application is in harmony with the Master Plan objective of encouraging, protecting and enhancing existing residential neighborhoods, and, since it is located at the end of a cul de sac, with the plan's guidance to avoid excessive concentration of special exceptions.

(4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

The design of the renovated carriage house will preserve the historic character of the subject property. The apartment will be suitable for occupancy by no more than four persons. On site parking is available and the lot contains more than three acres, amply buffering surrounding properties from any activity associated with it. There is only one other special exception in the general neighborhood. Thus, the Board finds that the outward impact of the special exception will be relatively minor and both visually and operationally in harmony with the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The outward impacts of the accessory apartment will be low. Its appearance will conform to historic preservation standards, and the neighboring properties are well buffered by substantial setbacks on the three acre lot. The Board finds therefore, that it will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that the accessory apartment will cause none of the listed objectionable effects. The Board adopts staff's finding that the two new exterior lights proposed for the rear and front of the carriage house maintain the residential character of the property.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.*

There is only one other special exception in the neighborhood. The Board finds that the proposed accessory apartment, in combination with that existing special exception, will not alter the predominantly residential character of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that neither the physical or operational characteristics of the accessory apartment will have any of these listed effects.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.*

The accessory apartment is served by adequate public facilities.

- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

Not applicable.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The Board adopts staff's finding that the requested accessory apartment will not be detrimental to either pedestrian or vehicular traffic safety.

SPECIFIC STANDARDS

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) *Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Only one accessory apartment is proposed.

- (2) *The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same*

lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:

- (i) The lot is 2 acres or more in size; and*
- (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

The subject property contains approximately three acres. The carriage house/garage existed as of December 2, 1983.

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

The apartment will be in an existing accessory structure. No addition to the structure is proposed. The proposal meets all development standards of the zone.

- (4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

The evidence of record indicates that the house and carriage house were built in 1879.

- (5) The accessory apartment must not be located on a lot:*

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

None of these conditions exists on the subject property.

- (6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

The Board adopts staff's finding that the design of the accessory apartment maintains the single family character of the home.

- (7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

The Historic Preservation Commission has reviewed the plans for rehabilitation of the carriage house and supports the requested special exception.

(8) The accessory apartment must have the same street address (house number) as the main dwelling.

The accessory apartment has the same address as the main house.

(9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.

The accessory apartment measures 1152 square feet, and is subordinate to the main dwelling.

(b) Ownership requirements:

(1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.

The Martins live in the main house.

(2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the applicant, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.

The Martins have owned the subject property for eleven years.

(3) Under no circumstances is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.

The Martins will receive compensation for no more than one dwelling unit.

(4) For purposes of this section, "owner" means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the board.

The Martins own the subject property.

- (5) The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Not applicable.

(c) Land use requirements:

- (1) The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

The lot measures 135,000 square feet.

- (2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in an excessive concentration of similar uses in the general neighborhood of the proposed use (see also Section 59-G-1.21(a)(6) which concerns excessive concentration of special exceptions in general).*

There is only one other approved special exception in the neighborhood. The Board finds that the accessory apartment in combination with that existing special exception will not result in an excessive concentration of similar uses.

- (3) There shall be adequate water supply and sewage disposal systems to serve the occupants of both the accessory apartment and the main dwelling.*

The property is served by public water and sewer.

- (4) Adequate parking shall be provided. There must be a minimum 2 off-street parking spaces, unless the Board makes either of the following findings:*

- (i) More spaces are required to supplement on-street parking; or*
- (ii) Adequate on-street parking permits fewer off-street spaces.*

Off-street parking spaces may be in a driveway but otherwise shall not be located in the yard between the front of the house and the street right-of-way line.

At least two parking spaces are available in the driveway.

- (5) *Accessory apartments shall not be detrimental to the use and peaceful enjoyment of surrounding properties or the general neighborhood, and shall cause no objectionable noise, traffic or other adverse impacts.*

The outward impacts of the accessory apartment will be low. Its appearance will conform to historic preservation standards, and the neighboring properties are well buffered by substantial setbacks on the three acre lot. The Board finds therefore, that it will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

Therefore, based upon the foregoing, the Board grants the special exception, subject to the following conditions:

1. The Applicants shall be bound by their testimony and exhibits of record to the extent that such evidence and testimony are identified in the Board's opinion granting the special exception.
2. The Applicants must receive a Historic Area Work Permit (HAWP) from the Historic Preservation Commission and adhere to all of its conditions of approval.
3. Pursuant to the provisions of the Montgomery County Housing Code and based upon its square footage, occupancy of the accessory apartment shall be limited to no more than two unrelated persons or a family of four.
4. The second story of the carriage house will be limited to storage.
5. Rehabilitation of the carriage house will be according to Exhibit No. 17.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Allison Ishihara Fultz and Donald H. Spence, Jr. Chairman in agreement and Donna L. Barron necessarily absent the Board adopted the following Resolution:

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 11th day of September, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.